

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Chapter 11

Robotic Vision Systems, Inc. and
Auto Image ID, Inc.,
Debtors

Bk. No. 04-14151-JMD
and
Bk. No. 04-14152-JMD

Jointly Administered

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MEMORANDUM OPINION
(corrected)

I. INTRODUCTION

Robotic Vision Systems, Inc. (“RVSI”) and Auto Image ID, Inc. (“AIID”) (collectively the “Debtors”) each filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code¹ on November 19, 2004 (the “Petition Date”). The Debtors’ cases have been consolidated for

¹ In this Memorandum Opinion, all references to “Bankruptcy Code” shall mean Title 11 of the United States Code.

administrative purposes only. On November 21, 2004, the Debtors filed their Motion For Order Extending the Deadline to File Lists of the Debtor's Equity Security Holders, Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases and Statements of Financial Affairs (Doc. No. 6) (the "First Motion to Extend"). The Court granted the First Motion to Extend on November 22, 2004 (Doc. No. 21) (the "Extension Order"), extending the deadline for the Debtors to file their schedules, statements of financial affairs, and other required documents to December 20, 2004.

On December 13, 2004, the Debtors filed Debtors' Second Motion for Order Extending the Deadline to File Lists of the Debtor's Equity Security Holders, Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases and Statements of Financial Affairs (Doc. No. 119) (the "Second Motion to Extend"). The Second Motion to Extend requested an extension of the filing deadline to February 14, 2005.

At the conclusion of a hearing on December 14, 2004, the Court advised the Debtors that the extension date proposed in the Second Motion to Extend appeared unreasonable. The Court advised the Debtors and other parties in interest to file any amendment or response to the Second Motion to Extend by December 17, 2004. The Court also advised the Debtors that the December 20, 2004, deadline would be extended indefinitely pending the Court's consideration of the Second Motion to Extend. Responses or objections to the Second Motion to Extend were filed by the Official Committee of Unsecured Creditors (the "Committee") (Doc. No. 140), the United States Trustee (the "Trustee") (Doc. No. 151), and Kellogg Capital Group ("Kellogg") (Doc. No. 150). The Debtors filed a response to the Committee's opposition to the Second Motion to Extend (the "Debtors' Response") (Doc. No. 148).

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. FACTS

RVSI and AIID design, manufacture and market machine vision, automatic identification and related products for the semiconductor capital equipment, electronics, automotive, aerospace, pharmaceutical and other industries. RVSI is a public company organized into two primary business segments: (i) the semiconductor equipment group (“SEG Division”) and (ii) the Acuity CiMatrix segment (“ACIM”). AIID is a wholly owned subsidiary of RVSI, which conducts a small percentage of RVSI’s operations in the ACIM segment but does not operate in the SEG Division. The Debtors executive offices are located in Nashua, New Hampshire, and they have four other offices or warehouses located in Weare, New Hampshire, Huntsville, Alabama, Hauppauge, New York and Canton, Massachusetts. The Debtors employ approximately 250 persons, of whom 100 are engineering and technical personnel.

The Debtors filed skeletal petitions on the Petition Date. The Debtors have not yet filed schedules A through J, the declaration concerning the schedules, the statement of financial affairs, the list of equity security holders, summary of schedules, matrix, matrix verification, corporate ownership statement, and copies of nonresidential real estate leases (collectively the “Schedules”). See Federal Rules of Bankruptcy Procedure² 1007 and 7007.1; LBR 1007-1(d).

² In this Memorandum Opinion all references to “Bankruptcy Rule” shall mean the Federal Rules of Bankruptcy Procedure.

The Committee contends that because the Debtors are public companies required to maintain adequate records and file periodic reports with the Securities and Exchange Commission with respect to their operations, they should be able to file their Schedules in a timely manner. The Committee further asserts that in view of the current efforts to sell the SEG Division and the matters scheduled for hearing on January 13, 2005 (i.e. stay relief, a Debtors' motion to pay prepetition payroll, a possible contested cash collateral motion and a possible contested motion to appoint a chapter 11 trustee), it is essential the Debtors file the Schedules on or before January 7, 2005.

The Trustee contends the Debtors' requested extension to February 14, 2005 will be detrimental to the best interests of creditors and the estate for two reasons. First, it is beyond the sixty-day deadline under section 365(d)(4) of the Bankruptcy Code for the Debtors to accept or reject unexpired leases of nonresidential real property. Second, the Debtors have not established cause for the requested extension. The Trustee, therefore, suggests an extension to January 3, 2005.

Kellogg, a shareholder of RVSI, points out that the requested extension date would be nearly three months after the petition date and only one month before the expiration of the Debtors' exclusive period to file a chapter 11 plan of reorganization. See 11 U.S.C. § 1121(b). Kellogg argues that all parties in interest require, and are entitled to, the information that will be contained in the Schedule because the Debtors have stated that the SEG Division may have a value of up to \$50,000,000.00 and the sale of the SEG Division is on a fast track. For these reasons, Kellogg suggests a deadline of January 6, 2005.

The Debtors contend they cannot meet the deadlines proposed by the responding parties because of the "numerous immediate demands being placed against their resources" in the form of

“urgent legal and business issues, involving many parties in interest in the United States and abroad.” Debtors’ Response at paragraphs 2 and 3. The specific issues identified by the Debtors are:

- a. preparing for a possible contested cash collateral hearing on January 13, 2005;
- b. responding to a possible motion by their prepetition lender for appointment of a chapter 11 trustee;
- c. responding to anticipated documentary discovery demands by their prepetition lender to be due December 27, 2004;
- d. preparing to conduct and defend at least seven depositions in connection with the anticipated, contested cash collateral and chapter 11 trustee hearings;
- e. responding to a motion for relief scheduled to be heard on January 13, 2005;
- f. working with their investment banker to expeditiously sell the SEG division; and
- g. negotiating and providing due diligence to prospective replacement lenders.

The Debtors are now requesting an extension to January 31, 2005, as fair, reasonable, and realistic.

III. DISCUSSION

The Bankruptcy Code requires the Debtors to file “a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor’s financial affairs.” 11 U.S.C. § 5221(1). However, the Bankruptcy Code does not prescribe the form or time within which such information must be filed. It is the Bankruptcy Rules that require the Debtors to file such information as prescribed by the Official Forms. Bankruptcy Rule 1007(a) and (b). The

Schedules were required to be filed within fifteen days after the Petition Date. Bankruptcy Rule 1007(c). The Court may grant an extension of time for the filing of the Schedules “for cause shown” and on notice to the Trustee and the Committee. The Court granted the First Motion to Extend because the Debtors established cause based upon their need to retain professional advisors, secure the right to use cash collateral, and attend to other matters which typically arise during the first few weeks of a major chapter 11 case.

RVSI is a public company that is required to file periodic reports with the Securities and exchange Commission. The Debtors employ 250 persons in five locations from New Hampshire to Alabama. The Debtors have retained two large, competent, and experienced law firms, one in New York City and one in Manchester, New Hampshire, to represent and advise them in these proceedings. The Debtors have retained an experienced and competent turnaround manager. The Debtors have engaged an experienced and competent investment banker to advise and assist RVSI in the sale of the SEG Division. RVSI is not a thinly managed, closely held corporation trying to adjust to the difficulties of life under chapter 11 without significant management assistance and legal counsel. The original extended deadline, December 20, 2004, was thirty days after the Petition Date. In order to obtain further extensions, the Debtors must establish cause for the extension. Bankruptcy Rule 1007(c).

The Bankruptcy Rules do not define or delineate the parameters necessary to establish cause for an extension of time to file schedules. When a debtor is involved in a complex reorganization with numerous major issues at the beginning of the case, the number or complexity of such issues may be sufficient to establish cause for an extension beyond the fifteen days provided by the Bankruptcy Rules. When a debtor has few managers and advisors, the difficulty of dealing with the issues which invariably arise in the first few weeks of a chapter 11 proceeding

(i.e. cash collateral, vendor relations, customer relations, employee relations) and the shortage of personnel to attend to such issues may be sufficient to establish cause for some delay. The factors advanced by a debtor to establish cause and the importance of those factors to the progress of the case must be balanced against the importance to the Court, the creditors, and the estate of the timely disclosure of all information necessary for the administration of the case. The determination of cause must, of necessity, proceed on a case-by-case basis.

In this case, the contentious nature of the relationship between the Debtors and their first priority prepetition lender caused the Debtors to seek a replacement lender and immediately retain an investment banker to market the SEG Division. While those issues have and will continue to consume a significant portion of the time of the Debtors' management and their advisors, such problems are neither unique to chapter 11 proceedings nor a sufficient cause for a prolonged delay in the completion and filing of the Schedules. In fact, the existence of such problems may militate against establishing cause for further extension of the time to file the Schedules. The Debtors have retained a large number of experienced, capable, and well-compensated legal and business advisors. Furthermore, RVSI is a public company that, prior to the Petition Date, was required to have management information systems and personnel in place to maintain adequate books and records and file periodic reports with the Securities and Exchange Commission.

Despite the fact these Debtors appear to be in a better position than many other chapter 11 debtors to timely file their Schedules, they may be experiencing difficulty due to pending motions, conflicting demands of various parties in interest, and other business matters. However, the Second Motion to Extend neither alleges any such difficulties, except in very general terms, nor explains any attempts by the Debtors to accomplish necessary tasks or address such difficulties in order of their relative priority. Based upon the filing of the Second Motion to Extend, the Court

can infer the Debtors rank the seven matters specifically listed therein as having a higher priority than the completion and filing of the Schedules.

Furthermore, the Court notes the Debtors have not alleged that they have even requested extensions or continuances of those matters, let alone encountered any difficulty in obtaining such extensions or continuances. The Debtors have not requested the Court to extend any other deadlines, issue any protective orders or continue any hearings. The Second Motion to Extend recites a number of matters and issues which may demand the attention of the Debtors' management and their advisors. However, many, if not most, debtors encounter comparable problems in the first few months of a chapter 11 case. It may be that the issues in these cases are more complex than many other chapter 11 proceedings. However, the Second Motion to Extend does not establish that the Debtors' personnel and outside-advisory resources are not adequate to manage these Debtors in the successful prosecution of these chapter 11 proceedings. The Debtors' management and their advisors must evaluate the appropriate priority for the many tasks to be completed and issues to be resolved and evaluate the resources necessary to successfully manage the administration of these cases. The Second Motion to Extend fails to allege the Debtors have undertaken that effort or to delineate why their current resources are not adequate to complete and file the Schedules promptly.

In order to establish cause for a lengthy extension of time, the Debtors must demonstrate they have exhausted the capability of their management and advisors to respond to those matters that, as a matter of legal and business necessity, take priority over the need for the Debtors to file accurate and complete Schedules with the Court. This Court is now thirty-three days into this case. During the hearing on December 14, 2004, the Court asked counsel how long the Debtors expected the Court could continue to authorize retention and compensation of professionals,

consider the use of cash collateral, consider the sale of one of the Debtors' two operating divisions or consider authorizing replacement financing in the absence of accurate and complete Schedules. The Debtors had no satisfactory response to that question.

Under the facts and circumstances of this case, the Debtors failed to establish cause to extend the deadline to file the Schedules to January 31, 2005, or seventy-one days after the Petition Date. The Debtors need to give the completion and filing of Schedules the priority the task deserves. If they need the assistance of the Court in dealing with conflicting demands or motion requirements, they need to seek such assistance. Finally, the Court has reviewed the Report on Procedural Issues (Doc. No. 171) (the "Report") filed by counsel for the Committee pursuant to the Court's Order of December 21, 2004 (Doc. No. 164). The Report contains an analysis of the conflicting issues and tasks which confront the Debtors and their professionals.

IV. CONCLUSION

For the reasons set forth in this Opinion, the Court shall enter a separate order granting the Second Motion to Extend in part and setting the deadline for the Debtors to file the Schedules as the earlier of (a) three business days before any hearing on the sale of the SEG Division or (b) January 28, 2005.

This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

ENTERED at Manchester, New Hampshire.

Date: December 22, 2004

/s/ J. Michael Deasy
J. Michael Deasy
Bankruptcy Judge